

In the Matter of Fire Chief (PM3608F), City of Asbury Park
DOP Docket No. 2005-2288
(Merit System Board, decided February 23, 2005)

Thomas P. Canzanella, President of the Professional Firefighters Association of New Jersey, appeals the attached determination of the Division of Selection Services, which denied his request for a postponement of the Fire Chief (PM3608F), City of Asbury Park, promotional examination.

By way of background, John J. Murphy was provisionally appointed to the title of Fire Chief, pending promotional examination procedures, effective April 20, 2004. As a result, the promotional examination for Fire Chief (PM3608F), City of Asbury Park, was announced on August 1, 2004 with an application filing deadline of August 21, 2004 and a closing date of October 31, 2004.¹ The examination was announced open to candidates in the competitive division with an aggregate of one year of continuous permanent service in the title of Fire Captain. Department of Personnel (DOP) records reflect that six candidates filed for and were admitted to the subject examination, including the provisional incumbent.

Simultaneously, the City of Asbury Park's Fire Department was undergoing a reorganization under the supervision of the Department of Community Affairs (DCA). Part of this reorganization entailed establishing the rank of Battalion Fire Chief and the provisional appointment of three Fire Captains to the title of Battalion Fire Chief, effective July 16, 2004. As a result of these provisional appointments, a promotional examination for Battalion Fire Chief (PM3648F), City of Asbury Park, was announced on September 1, 2004 with an application filing deadline of September 14, 2004 and a closing date of October 31, 2004. The examination was announced open to candidates in the competitive division with an aggregate of one year of continuous permanent service in the title of Fire Captain. DOP records reflect that eight candidates were admitted to this examination, including the three provisional incumbents.²

Following the announcement of the above examinations, Mr. Canzanella, Terence J. Reidy, Asbury Park's City Manager, and Douglas deWysocki, the President of the Professional Firefighters Association of Asbury Park, Local 384, requested the postponement of the Fire Chief (PM3608F) examination. All of the parties asserted that it was their intention to allow Mr. Murphy to remain in the title of Fire Chief throughout the reorganization of the Fire Department. They suggested that the subject promotional examination be postponed until such time as the Battalion Fire Chief (PM3648F) examination is administered and permanent appointments made from the resultant list. In

¹ It is noted that the examination announcement was subsequently amended to change the application filing deadline to September 14, 2004.

² It is noted that, at the time of the announcement of the promotional examinations, nine individuals were serving permanently in the title of Fire Captain. Six of these nine individuals (including Mr. Murphy and two of the three provisional Battalion Fire Chiefs) filed for the Fire Chief (PM3608F) examination. Eight of the nine individuals (all Fire Captains except for Mr. Murphy) filed for the Battalion Fire Chief (PM3648F) examination.

that fashion, a Fire Chief examination could then be announced open to individuals serving in the title of Battalion Fire Chief, who had gained experience serving in a high level supervisory position.

The Division of Selection Services denied the request to postpone the Fire Chief (PM3608F) promotional examination, due to the continued service of a provisional appointee. In this regard, it was noted that *N.J.S.A. 11A:4-13(b)* provides that “[i]n no case shall any provisional appointment exceed a period of 12 months.” However, the Division of Selection Services also indicated that, given the number of common applicants and common testable elements for both examinations, it would develop a special oral examination to be administered for both the Fire Chief and Battalion Fire Chief titles. The development of a special examination for these titles would give candidates additional time to prepare for the examination and enable them to take only one examination for these two titles.

In the instant petition, Mr. Canzanella reiterates that it is the goal of the union and the appointing authority to test for Battalion Fire Chief, promote eligibles from that list, and then appoint a new Fire Chief from those serving in the title of Battalion Fire Chief. Mr. Canzanella argues that proceeding with a promotional examination for Fire Chief at this time “compels the City to consider candidates for the chief executive position of its Fire Department without any actual day to day performance experience.”

Despite being provided the opportunity to supplement the record, the appointing authority has submitted no further arguments or documentation for the Board’s review.

CONCLUSION

N.J.S.A. 11A:4-13(b) provides that “in no case shall any provisional appointment exceed a period of 12 months.” In order to ensure compliance with the law, examinations are announced as soon as practicable upon notification of a provisional appointment. Accordingly, upon Mr. Murphy’s provisional appointment to the title of Fire Chief and the provisional appointments of three individuals to the title of Battalion Fire Chief, promotional examinations for these titles were appropriately announced. While the union and the appointing authority have requested that Mr. Murphy’s provisional appointment be permitted to continue indefinitely, this requirement is statutory and cannot be relaxed by the Merit System Board or the DOP. In addition, it must be noted that *N.J.S.A. 11A:4-15* and *N.J.A.C. 4A:4-5.1(a)* require a working test period, which permits an appointing authority to determine whether an employee satisfactorily performs the duties of a title. This mechanism will permit the appointing authority to adequately evaluate any appointee’s ability to successfully perform the high level supervisory duties of the title of Fire Chief. Finally, it must be emphasized that the DOP has a duty to insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness. The dual purpose of the Merit System is to ensure efficient public service for State government and to provide appointment and advancement opportunities to Merit System employees based on their knowledge, skill and abilities. These interests are best served when more, rather than fewer, individuals are presented with the employment opportunities that a promotional examination confers. *See Communication*

Workers of America v. New Jersey Department of Personnel, 154 N.J. 121 (1998). Accordingly, the Board finds that a sufficient basis has not been presented to postpone the promotional examination for Fire Chief (PM3608F), City of Asbury Park.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.